MONTANA LEGISLATIVE HISTORY

Chapter 508 19 93

Bill H 413 S _____ Original bill & history ___C

H. Committee on Taxation			S. Committee on Taxation		
Hearing Date(s)	Feb 03	✓C	Hearing Date(s)	Mar 9	✓C
	Feb 10	✓C		Apr 02	✓C
		C			C
		C			C
Date Out	Feb 10	✓C		Apr 05	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

1/30	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/30	FISCAL NOTE REQUESTED		
1/30	FIRST READING		
2/05	FISCAL NOTE RECEIVED		
2/05	REREFERRED TO FISH & GAME		
2/09	FISCAL NOTE PRINTED		
2/11	HEARING		
2/16	TABLED IN COMMITTEE		

HB 413 INTRODUCED BY QUILICI, ET AL.

CLARIFY PUBLIC SERVICE COMMISSION AND CONSUMER COUNSEL FEES BY REQUEST OF DEPARTMENT OF REVENUE

1/30	INTRODUCED		
1/30	REFERRED TO TAXATION		
1/30	FIRST READING		
1/30	FISCAL NOTE REQUESTED		
2/05	FISCAL NOTE RECEIVED		
2/09	FISCAL NOTE PRINTED		
2/09	HEARING		
2/11	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/12	FISCAL NOTE REQUESTED		
2/12	FISCAL NOTE RECEIVED		
2/13	FISCAL NOTE PRINTED		
2/15	2ND READING PASSED AS AMENDED	99	0
2/17	3RD READING PASSED	99	0
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO TAXATION		
3/17	HEARING		
4/05	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/08	2ND READING CONCURRED	47	0
4/12	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/14	2ND READING AMENDMENTS CONCURRED	90	7
4/15	3RD READING AMENDMENTS CONCURRED	95	5
4/20	SIGNED BY SPEAKER		
4/21	SIGNED BY PRESIDENT		
4/22	TRANSMITTED TO GOVERNOR		
4/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 508		
	EFFECTIVE DATE: 04/24/93		

HB 414 INTRODUCED BY KELLER, ET AL.

AMEND BONDING AUTHORITY FOR SOLID WASTE MANAGEMENT DISTRICTS

1/30	INTRODUCED		
1/30	REFERRED TO LOCAL GOVERNMENT		
1/30	FIRST READING		
2/11	HEARING		
2/12	COMMITTEE REPORT—BILL PASSED		
2/13	2ND READING PASSED	98	0
2/16	3RD READING PASSED	98	1
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO LOCAL GOVERNMENT		
3/16	HEARING		
3/17	COMMITTEE REPORT—BILL CONCURRED		
3/18	2ND READING CONCURRED	49	0

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0413, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
An act clarifying the method for determining the Public Service Commission fee and Consumer Counsel fee by the Department of Revenue.

ASSUMPTIONS:
1. The effective and applicability dates of the proposed legislation are both October 1, 1993 (MDOR).
2. General fund appropriations for the Public Service Commission are $2,419,000 in FY94 and $2,092,000 in FY95 (OBPP).
3. Total appropriations for the Consumer Counsel are $1,002,000 in FY94 and $1,003,000 in FY95 (OBPP).
4. At FYE93, both agencies will have spent their entire FY93 appropriations and will have no excess revenue or special revenue fund balances leftover from previous years (MDOR).
5. The fee rates for both agencies will be set according to current law in May of 1993 to raise the appropriated amounts for FY94 (MDOR).
6. Under current law, regulated utilities report their gross receipts and pay the appropriate fee 90 days following the close of each calendar quarter (MDOR).
7. Under proposed law, regulated utilities report their gross receipts and pay the appropriate fee 30 days following the close of each calendar quarter (MDOR).
8. One additional quarter of revenue for both agencies will be accrued to FY94 because of the change in payment dates (MDOR).
9. The fee rates for both agencies will be set in August of 1994 to raise the FY95 appropriated amounts minus any funds remaining unspent from prior years (MDOR).
10. Revenue attributable to a particular fiscal year that is received within 60 days of the close of that fiscal year is accrued as a receipt of that fiscal year (MDOR).

FISCAL IMPACT:

Revenues:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
PSC Fee (01)	2,419,000	1,210,000	(1,209,000)	2,092,000	0	(2,092,000)
PSC Fee (02)	0	1,814,000	1,814,000	0	1,487,000	1,487,000
Total	2,419,000	3,024,000	605,000	2,092,000	1,487,000	(605,000)

(continued)

Dave Lewis 2-4-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2-9-93
JOE QUILICI, PRIMARY SPONSOR DATE

FISCAL IMPACT: (continued)

Revenues:	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Consumer Counsel Fee (02)	1,002,000	1,253,000	251,000	1,003,000	752,000	(251,000)

TECHNICAL NOTES:
The Joint Subcommittee for Natural Resources action to date on the general appropriations act recommends a general fund appropriation for the Public Service Commission. It is assumed that the appropriation for the PSC would be revised contingent upon passage and approval of this bill. If the general appropriations act was not coordinated with this bill, there would be an adverse impact to the general fund of $1.2 million in FY94 and $2.1 million in FY95.

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0413, as second reading.

DESCRIPTION OF PROPOSED LEGISLATION:
An act clarifying the method for determining the Public Service Commission fee and Consumer Counsel fee by the Department of Revenue.

ASSUMPTIONS:
1. General fund appropriations for the Public Service Commission are $2,419,000 in FY94 and $2,092,000 in FY95 (OBPP).
2. Total appropriations for the Consumer Counsel are $1,002,000 in FY94 and $1,003,000 in FY95 (OBPP).
3. At FYE93, both agencies will have spent their entire FY93 appropriations (MDOR).
4. The fee rates for both agencies will be set according to current law in May of 1993 to raise the appropriated amounts for FY94 (MDOR).
5. Under current law, regulated utilities report their gross receipts and pay the appropriate fee 90 days following the close of each calendar quarter (MDOR).
6. Under proposed law, regulated utilities report their gross receipts and pay the appropriate fee 30 days following the close of each calendar quarter (MDOR).
7. Revenue attributable to a particular fiscal year that is received within 60 days of the close of that fiscal year is accrued as a receipt of that fiscal year (MDOR).
8. One additional quarter of revenue for both agencies will be accrued to FY93 because of the change in payment dates and the applicablity date of the bill. The accelerated revenue will total $302,500 for the PSC fee and $60,600 for the consumer counsel fee (based on FY92 collection pattern). These excess FY93 revenues will be "rebated" to taxpayers in FY94 through a reduction in the rates as required by law.

FISCAL IMPACT:

Revenues:
The change in the payment date coupled with the applicability date of the bill will accelerate $302,500 in PSC fees and $60,600 in consumer counsel fees into FY93 because of revenue accruals.

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
PSC Fee (01)	2,419,000	2,116,500	(302,500)	2,092,000	2,092,000	0
Consumer Counsel Fee (02)	1,002,000	941,400	(60,600)	1,003,000	1,003,000	0

David Lewis 2-12-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Joe Quilici 2-13-93
JOE QUILICI, PRIMARY SPONSOR DATE

Fiscal Note for HB0413, second reading.
HB 413 - #2

HEARING ON SB 183

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, Senate District 20, Great Falls, said SB 183 was introduced at the request of the Department of Revenue (DOR). SB 183 provides that property owned by a tax-exempt or taxable entity and used for both tax-exempt and taxable purposes be assessed and taxed based upon the apportioned ownership or use of the property.

Proponents' Testimony:

Judy Rippingale, Deputy Director, Department of Revenue, said DOR requested the bill to reduce the confusion regarding ownership of property by tax exempt organizations. It would clarify taxable use and tax procedures regarding such property. She said SB 183 will cut down on problems they have had based on unfair taxation.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

SEN. DOHERTY closed.

HEARING ON HB 413

Opening Statement by Sponsor:

REP. JOE QUILICI, House District 71, Butte, said HB 413 was introduced at the request of the Department of Revenue (DOR). HB 413 clarifies the DOR method of determining the Public Service Commission (PSC) fee and Consumer Counsel.

Proponents' Testimony:

Brian Smith, DOR, distributed and explained amendments prepared by DOR. **EXHIBIT 1**

Bob Anderson, Chairman, Public Service Commission (PSC), said the PSC supports HB 413. It clarifies the method of determining the PSC fee. He distributed information and written testimony. **EXHIBIT 2**

John Alke, Montana Dakota Utilities (MDU), said MDU supports HB 413 and the amendments proposed by DOR. He presented amendments proposed by MDU. **EXHIBIT 3**

Kendra Kawaguchi, Pacific Power & Light Company, said the Pacific Power & Light Company supports HB 413 with the proposed amendments.

Mike Harrington, Montana Power Company (MPC), said MPC supports HB 413 and the amendments. He urged the Committee to pass the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. FOSTER asked **Bob Anderson** to confirm that the budget would not be changed by this bill; and also if the Appropriations Committee would consider the fee recommendations in the PSC budget deliberations. **Mr. Anderson** replied affirmatively.

Closing by Sponsor:

REP. QUILICI closed stating the bill not affect the budget process. Once the Appropriations Committee and the Legislature adopt the budget, the Consumer Counsel and the PSC will have to live by it.

HEARING ON HB 400

Opening Statement by Sponsor:

REP. DAVID WANZENRIED, House District 7, Kalispell, said HB 400 will grant rulemaking authority to the Department of Health and Environmental Sciences (DHES) to establish fees to pay for certain radiological services. It will establish a radiation services account in the state special revenue fund and provides an effective date.

Proponents' Testimony:

Ray Hoffman, Administrator of Centralized Services Division, DHES, wanted the Committee to be aware that HB 400 is an administration bill and is supported by Governor Racicot. He said HB 400 is a result of a bill which passed in the 1992 Special Session of the Legislature. It mandated a 5% reduction in agencies' general fund appropriations. Fees for radiation control services will be increased in order to help offset DHES budget reductions. He noted the fee increases must be approved by the Appropriations Committee before they are adopted.

Adrian Howe, Chief, Occupational and Radiological Health Bureau, DHES, presented written testimony in support of HB 400. **EXHIBIT 4**

Greg Bahny, operator of a company that distributes x-ray equipment and supplies to hospitals, Kalispell, said he supports

EXHIBIT 1
DATE 2-9-93
HB 413

Amendments to House Bill 413
First Reading Copy

Prepared by Department of Revenue
(2/8/93)

1. Title, line 7.
Following: "REVENUE"
Strike: "AND"

2. Title, line 9.
Following: "MCA"
Insert: "; AND PROVIDING A RETROACTIVE APPLICABILITY AND AN IMMEDIATE EFFECTIVE DATE"

3. Page 2, line 14.
Following: "appropriated,"
Insert: "except as provided in 69-1-224(1)(c),"

4. Page 6, line 3.
Following: "appropriated,"
Insert: "except as provided in 69-1-224(1)(c),"

5. Page 7, line 10.
Following: "part."
Insert: "NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to revenue generated by regulated activity beginning after April 1, 1993.

NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval."

Reason for Amendments:

1. The first and second amendments to the title reflect subsequent amendments to the parts of the bill.

2. The third and fourth amendments specify that the prohibition against the increase in the amount appropriated does not prevent the department from making the adjustments specified in § 69-1-224(1)(c).

3. The fifth amendment clarifies the applicability and effective date of the bill. An April 1, 1993 effective date is preferred because it will enable the bill to apply to fiscal year 1994. As written it would not come into effect until fiscal year 1995.

EXHIBIT 2
DATE 2-9-93
HB 413

PUBLIC SERVICE COMMISSION
1701 Prospect Avenue • PO Box 202601
Helena, Montana 59620-2601
Telephone: (406) 444-6199
FAX #: (406) 444-7618

Bob Anderson, Chairman
Bob Rowe, Vice Chairman
Dave Fisher
Nancy McCaffree
Danny Oberg

February 9, 1993

Testimony of
Bob Anderson, Chairman, Public Service Commission

The PSC supports HB 413, a bill to clarify the method for determining the PSC fee.

Introduction

The PSC is funded by a tax on regulated utilities. Based on the PSC appropriation and utility revenues, the tax is paid by ratepayers and amounts to about $3.40 per year per household. Utilities collect the tax and pay it to the Dept. of Revenue which places it in the general fund.

If utility sales are higher than projected, the DOR adjusts the tax rate downward. If utility revenues are lower than anticipated, the tax rate is adjusted upward. In theory, because of the adjusting mechanism, there is no effect on the general fund.

The problem

Utility revenues are always different from projections, because of changes in the weather and the economy. The utility tax has swung from overcollection for a few years to undercollection for a few years. When collections are too great, there is a subsidy from ratepayers to the general fund. When collections are less, there is a subsidy from the general fund to ratepayers, thereby creating a deficit.

Under the current mechanism, the tax is adjusted quarterly, after quarterly revenue reports by the utilities. Adjustments, therefore, lag collections by at least six months.

Because of these swings and lags, at times the general fund subsidizes the PSC. Other times, ratepayers subsidize the general fund.

The solution

HB 413, requested by the Department of Revenue, would correct these problems in two ways.

First, swings and lags would be reduced by allowing the DOR to adjust the utility tax 30 days after the utilities' quarterly revenue reports.

Second, the PSC budget would be placed in an account in the special revenue fund (like the Consumer Counsel's). This change would protect the general fund from undercollections of the utility tax. It would also help clarify how the PSC is funded and enable the budget subcommittee to better track general fund revenues and expenses.

There would be no effect on the PSC's budget or the budgeting process. The PSC's budget would be not be influenced by the illusion that it would affect the general fund. Rather, it could be based on the legislature's mandate to the PSC, the agency's needs, and any other policy considerations important to the legislature.

EXHIBIT 3
DATE 2-9-93
HB 413

AMENDMENTS TO HB 413

1. Page 5, ln 2-9
   Strike: In their entirety
   Insert: "(4) In the event the fee charged in one year is in excess of the amount actually expended in that year, the excess shall be deducted from the amount required to be raised by the fee for the next year before the determination required by subsection (1) is made. Money remaining unspent at the close of a fiscal year shall be used to reduce the percentage calculated in 69-1-224 in the subsequent fiscal year."

insurance policy because it provides income to our children in perpetuity. He said we may, from time to time, enjoy the interest but we may not use the principal of the trust. Too much money has already been diverted from the trust. The interest on the trust does not compound or go back into the trust. If that was so, at 11% interest, the trust would be doubling every 5-6 years without any new money flowing in.

REP. DRISCOLL agreed with **REP. ELLIOTT'S** motion but not his comparison with life insurance, as he felt life insurance is probably the worst investment as far as return. He felt this was a bad bill.

Motion/Vote: **REP. FOSTER MADE A SUBSTITUTE MOTION THAT HB 360 BE TABLED.** Motion carried 19-1 with **REP. HARRINGTON** voting no.

EXECUTIVE ACTION ON HB 413

Motion: **REP. McCARTHY MOVED HB 413 DO PASS.**

Motion: **REP. RANEY** moved adoption of the Montana-Dakota Utilities (MDU) proposed amendments.

Discussion: **REP. RANEY** said the bill directs that the funds allotted to the PSC be spent. If there are any funds left at the end of the year they are to be held over for the following year. He said **Judy Rippingale, Deputy Director, Department of Revenue,** approved the amendments.

REP. FOSTER said the Public Service Commission (PSC) had no problem with the amendments.

REP. DRISCOLL said without the amendments, the money reverts to the general fund, unless it is an earmarked account. This amounts to robbing the general fund again.

A lengthy discussion followed concerning the proposed amendments. **REP. HARPER** said the proposed amendments adjust the amount from year to year to make sure that more isn't charged than is necessary to run the PSC.

CHAIRMAN GILBERT said the title of the bill doesn't contain anything about setting up a special revenue account, but it is in the bill.

REP. RANEY withdrew his motion in order that the Committee be allowed to look at and discuss other proposed amendments.

Motion: **REP. REAM** moved adoption of the DOR proposed amendments. **EXHIBIT 7**

REP. REAM withdrew his motion to allow **CHAIRMAN GILBERT** to

propose an amendment.

VICE CHAIRMAN FOSTER ASSUMED THE CHAIR.

Motion: **REP. GILBERT** moved to amend page 5, lines 13-16 by striking the new underlined language and reinserting the stricken language.

Discussion:

REP. FOSTER said what the bill would do with the special account is different than most special revenue accounts. The PSC would still come before the Appropriations Committee and they would set the budget. He asked what would be lost by passing the bill.

REP. GILBERT said if the Appropriations Committee should decide not to fund the PSC fully, then neither the Appropriations Committee or the general fund could touch the remainder of the money. There is in excess of $2 million per biennium earmarked for the PSC. That money has remained in the general fund over the last 10 years so this would earmark another $2.5 million that couldn't be touched. That is the reason we need to keep general fund money out of special revenue accounts. He said three-fourths of the general fund money is tied up that way and can't be used. Once it is appropriated to those accounts, it is locked up. If there is excess revenue, it should go into the general fund.

REP. GILBERT said what the PSC really wanted in the bill is the language on page 3, lines 11-23, the method of determining the PSC and the Consumer Counsel fee. He said it also accelerates the quarterly reports.

REP. RANEY said he was opposed to the motion. If a fee is collected for a specific purpose, then it should be in a specific account for that purpose. If there is excess money because the fee is too high it would be carried over to the following year and reduce the amount the fees assessed. There is no increased spending authority for the PSC.

REP. ELLIOTT said **REP. RANEY'S** argument made sense. The object of the fee is to fund the PSC. If the fee brings in too much money, that money, without the MDU amendment, would revert to the general fund. **REP. GILBERT** said with his amendment all the money would go to the general fund and would be appropriated out by the Appropriations Committee. **REP. ELLIOTT** said if the excess went into the general fund there would be no incentive for the Legislature to reduce the fees. He resisted **REP. GILBERT'S** amendment.

REP. DRISCOLL said this would earmark the $3.5 million per year for the PSC and consumer counsel. He objected to earmarking money. The money should be appropriated to the PSC and if there is any excess it remains in the general fund. If the MDU

amendment is adopted it can't ever be used.

REP. ELLIOTT said there are reasons to look at earmarking. He said the public understands mill levies which are earmarked funds.

REP. GILBERT said earmarking reduces accountability by state departments. They will simply increase the fees to raise more money and there will be no oversight. Three-fourths of the oversight on the general fund has already been given away. The departments should have to come in with their budgets, justify those budgets and get their appropriations. If the PSC was funded solely on fees, it could be feast one year and famine the next.

VICE CHAIRMAN FOSTER said, based on the points expressed by **REPS. DRISCOLL and GILBERT**, he was willing to let it sit for now and if it needs to be addressed again two years from now, okay. He said the remarks against earmarking were very strong.

REP. GILBERT said the fees are passed on to the customer and don't think for a minute the utilities are paying the fee. This bill has no affect on the utilities. They pay the fee and charge it to the customer. He said he would be more comfortable with the Legislature setting the fees than the PSC. Earmarking is bad. Every one of those special revenue accounts contribute to the deficit and that means more cuts from existing programs.

REP. McCAFFREE said he would abstain from voting as his wife is a member of the PSC.

Vote: Roll call vote was taken. Motion carried 14-5, with **REP. McCAFFREE** abstaining. **EXHIBIT 8**

CHAIRMAN GILBERT REASSUMED THE CHAIR

Motion: **REP. McCARTHY MOVED HB 413 DO PASS AS AMENDED.**

Motion: **REP. REAM** moved adoption of the DOR amendments. **EXHIBIT 7**

Discussion: **CHAIRMAN GILBERT** asked **Mr. Woodgerd** to explain the amendments. **Mr. Woodgerd** replied they were technical amendments, the last and most important being the retroactive applicability. It states the bill would apply beginning this year so the fee set this year would be set under this bill rather than the old law. The other would make sure there were no loopholes in payments.

Vote: Motion carried unanimously to adopt DOR amendments.

REP. HARPER asked about the fiscal impact of the amendments. **CHAIRMAN GILBERT** said actually $1,209,000 in FY 94 and $2,292,000 in FY 95 would be lost to the general fund if the bill passed without the amendment because those are the current fees being

paid by utilities to the PSC and the Consumer Counsel and that money would no longer flow into the general fund, but into the special revenue account. The bill doesn't adjust the fees, it only accelerates the payments. He said the fees remain the same.

REP. FOSTER said the PSC and the Consumer Counsel answer to DOR, they cannot just decide to change their fees.

Vote: Motion that HB 413 **DO PASS AS AMENDED** carried unanimously with **REP. McCAFFREE** abstaining. **EXHIBIT 9.**

HOUSE STANDING COMMITTEE REPORT

February 10, 1993

Mr. Speaker: We, the committee on Taxation report that House Bill 413 (first reading copy -- white) do pass as amended .

Signed: Bob Gilbert
Bob Gilbert, Chair

And, that such amendments read:

1. Title, line 7.
Following: "REVENUE;"
Strike: "AND"

2. Title, line 9.
Following: "MCA"
Insert: "; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE"

3. Page 2, line 14.
Page 6, line 3.
Following: "increased"
Insert: ", except as provided in 69-1-224(1)(c),"

4. Page 5, lines 13 and 14.
Strike: "an account in the state special revenue fund to the credit of the department"
Insert: "the general fund. All appropriations to the department must be paid from the general fund"

5. Page 7.
Following: line 10
Insert: "NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to revenue generated by regulated activity beginning after April 1, 1993.

NEW SECTION. Section 6. Effective Date. [This act] is effective on passage and approval."

-END-

DATE 2/10/93
HB HB 413

HOUSE OF REPRESENTATIVES

TAXATION COMMITTEE

ROLL CALL VOTE

DATE 2/10/93 BILL NO. HB 413 NUMBER _____

MOTION: Rep Gilbert to amend p. 5 lines 13-16.

NAME	AYE	NO
REP. FOSTER	✓	
REP. HARRINGTON	✓	
REP. ANDERSON	✓	
REP. BOHLINGER	✓	
REP. DOLEZAL		✓
REP. DRISCOLL	✓	
REP. ELLIOTT		✓
REP. FELAND	✓	
REP. HANSON	✓	
REP. HARPER		✓
REP. HIBBARD	✓	
REP. KELLER	✓	
REP. McCAFFREE	PASS	
REP. McCARTHY	✓	
REP. NELSON	✓	
REP. ORR	✓	
REP. RANEY		✓
REP. REAM		✓
REP. TUNBY	✓	
REP. GILBERT	✓	

EXHIBIT 9
DATE 2/10/93
HB 413

HOUSE OF REPRESENTATIVES

TAXATION COMMITTEE

ROLL CALL VOTE

DATE 2/10 BILL NO. _____ NUMBER _____

MOTION: HB 413 do pass as Amended

NAME	AYE	NO
REP. FOSTER	X	
REP. HARRINGTON	X	
REP. ANDERSON	X	
REP. BOHLINGER	X	
REP. DOLEZAL	X	
REP. DRISCOLL	X	
REP. ELLIOTT	X	
REP. FELAND		
REP. HANSON	X	
REP. HARPER	X	
REP. HIBBARD	X	
REP. KELLER	X	
REP. McCAFFREE	proxy	
REP. McCARTHY	X	
REP. NELSON	X	
REP. ORR	X	
REP. RANEY	X	
REP. REAM	X	
REP. TUNBY	X	
REP. GILBERT	X	

EXHIBIT 7
DATE 2/10/93
HB 413

Amendments to House Bill No. 413
First Reading Copy

Requested by Dept. of Revenue

For the Committee on Taxation

Prepared by Lee Heiman
February 9, 1993

1. Title, line 7.
Following: "REVENUE;"
Strike: "AND"

2. Title, line 9.
Following: "MCA"
Insert: "; AND PROVIDING A RETROACTIVE APPLICABILITY AND AN IMMEDIATE EFFECTIVE DATE"

3. Page 2, line 14.
Page 6, line 3.
Following: "increased"
Insert: ", except as provided in 69-1-224(1)(c),"

4. Page 5, lines 13 and 14.
Strike: "an account in the state special revenue fund to the credit of the department"
Insert: "the general fund. All appropriations to the department must be paid from the general fund"

5. Page 7.
Following: line 10
Insert: "NEW SECTION. **Section 5. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to revenue generated by regulated activity beginning after April 1, 1993.

NEW SECTION. **Section 6. Effective Date.** [This act] is effective on passage and approval."

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Chairman Mike Halligan, on March 17, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Sen. Mike Halligan, Chair (D)
Sen. Dorothy Eck, Vice Chair (D)
Sen. Bob Brown (R)
Sen. Steve Doherty (D)
Sen. Delwyn Gage (R)
Sen. Lorents Grosfield (R)
Sen. John Harp (R)
Sen. Spook Stang (D)
Sen. Tom Towe (D)
Sen. Fred Van Valkenburg (D)
Sen. Bill Yellowtail (D)

Members Excused: None.

Members Absent: None.

Staff Present: Jeff Martin, Legislative Council
Bonnie Stark, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 426, SB 427, HB 413
Executive Action: HJR 3

HEARING ON HB 413

Opening Statement by Sponsor:

Rep. Joe Quilici, House District #71, presented HB 413, which is a Department of Revenue (DOR) bill clarifying the method of determining the Public Service Commission (PSC) fee and the Consumer Counsel (CC) fee. Under the current rate-setting method, the possibility exists that at one time too many funds may be collected, and not enough funds collected another time. This legislation assures that whatever the Legislature appropriates, that is the amount of revenue that will be generated from industry fees and deposited into the special revenue fund for the Consumer Counsel.

Proponents' Testimony:

Brian Smith, Economist with the DOR, said the DOR has drafted this bill in order to establish a clear, consistent and uniform rate-setting method for both the PSC and CC fees. They feel this new method will use more recent information to increase the accuracy of the rate-setting process, it will raise the amount appropriated by the Legislature, and it will mandate any revenue short-fall and overage to the state special revenue fund balance. The tax year for collection of both PSC and CC fees will be changed from July 1 to October 1 of each year. This will allow the DOR to use fiscal-year data on agency expenditures. The due date for filing returns and payment of the fees will also be changed. This will significantly decrease the lag time in reporting gross operating revenues from regulated utilities, and will assist the DOR in becoming aware of the revenue short-fall or overage earlier and allow them to adjust the rate necessary to increase the tax, or decrease the tax rates and appropriations.

Bob Anderson, Chairman of the PSC, spoke in support of HB 413 as it was first introduced in the House. Mr. Smith explained the basic problem, lags in collection of the tax, and swings--either too much collection, or too little--depending on a number of factors beyond anyone's control. Factors, such as the weather, affects utility revenues. HB 413, as originally introduced, would correct that problem in two ways. One is the way Mr. Smith described by refining the collection mechanisms. The other way, which the House amended out of the bill, would change the funding mechanism from the general fund to a special revenue account, exactly as exists for the Montana Consumer Counsel. Having the tax flow through the general fund creates two illusions, according to Mr. Anderson, that are problematic to the Commission. One is the illusion that changing their budget will affect the general fund. Because of the statutory tax mechanism, that is not the case. The other illusion is that from time to time money collected as part of the tax could be retained by the general fund and appropriated to other agencies. That is a temptation that should not exist and does not exist. This is problematic for the Commission, and Mr. Anderson urged that the bill be amended back to the form in which it was introduced in the House. Mr. Anderson presented Exhibit No. 1 which is an amendment to restore HB 413 to its original draft. This would allow the Commission to be taxed and the mechanism treated exactly as the Consumer Counsel is taxed.

John Alke, Montana Dakota Utilities (MDU) representative, spoke in support of HB 413 and the amendment offered by the PSC. Mr. Alke said it was very important to the industry when both the Consumer Counsel tax and the PSC tax were established, that the tax be clearly a funding mechanism only for the PSC. The structure has always been that way. The Legislature determines the appropriation for the PSC, and the DOR splits that appropriation between the various rate lading utilities. When MDU agreed to that process, it was very important to them that it

be clearly established that the general fund could not make money off that tax. That has always been the structure, and there is a crediting mechanism in there that if there is an over-collection, the utilities get the benefit of that in the next year's tax calculation. MDU thinks, like the PSC does, that it is appropriate to leave it in a special revenue account. If it is treated as general fund money, it causes problems because the utilities will always get credit for any overpayment that occurs under the tax. For clearness sake, and for symmetry sake, since the MCC tax is a special revenue account, MDU thinks the PSC tax should be a special revenue account. Originally it was set up that way, and was amended from a special revenue account to the general fund.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Van Valkenburg asked Rep. Quilici asked why HB 413 was amended in the House. Rep. Quilici said his understanding is that for an executive agency, even though the funds were state special funds, the House wanted to put the funds under the general fund so the Legislature would take a closer look at all budgets. Usually state special funds are not scrutinized as much as general fund monies.

Senator Van Valkenburg asked if this Committee would adopt the amendment presented by Mr. Anderson, what is the likelihood the House will concur in the bill as amended. Rep. Quilici said with the makeup of the House, he thinks the bill will end up in a conference committee.

Senator Towe asked Mr. Smith how the mechanism used for determining appropriations, set out on Page 3 of HB 413, is different from what is being done now. Mr. Smith said it is essentially no different than what is currently being done; this would just clarify some issues such as the code not allowing for increasing the amount to be raised by the fee in a year, more than what was appropriated. The DOR thinks this is appropriate when in the prior year, the tax did not raise enough to meet the appropriation. This would give the DOR the authority to do what is being done now and would clarify the code. This bill also changes the dates for filing. Mr. Smith said the essential mechanism is still the same where the DOR basically takes the appropriation, minus any unspent revenue from the prior year, and uses that as a requirement to raise that amount from the gross operating revenues of utilities.

Senator Towe asked why the bill is retroactive to April 1st when the filing isn't until August 31st. Mr. Smith replied that otherwise they would have to apply the rate-setting method as current law exists, and by May 30th, they would have to set a new rate, and turn around and do it again in August. They would just as soon start off doing it from the new schedule in August. If the amendment is adopted, the DOR would end up splitting part of the revenue into the general fund and part into the state special revenue fund.

Closing by Sponsor:

Rep. Quilici offered no further remarks in closing.

HEARING ON SB 426

Opening Statement by Sponsor:

Senator Ed Kennedy, Senate District #3, presented SB 426, which was requested by the Senate Local Government Committee in response to the recent Court case involving Carbon County. The legislation was requested because of concern that local governments would not be able to sell their special improvement district (SID) bonds unless legislation is provided to clarify the obligation of local governments to make loans to the SID revolving fund. When local governments sell their SID bonds, they have, in the past, agreed to establish a revolving fund from which they can borrow if the revenue pledged to pay the bonds is insufficient. Local governments have also agreed to levy taxes to loan money to the revolving fund in case the revolving fund is inadequate. The nature of SIDs make necessary some mechanism to handle shortfalls and delays in collecting the assessments. In the Carbon County decision, the District Court found that because the SID was insolvent, the County could not be required to make loans to the revolving fund. The court decision did not offer guidance as to when the agreement to levy taxes for the revolving fund can be enforced. The law for SID bond revolving funds from municipalities are nearly identical to the county law. Most of Montana's larger municipalities and urban counties sell SID bonds every year to pay for water, sewer, paving, curb, and other improvements in developed neighborhoods.

Senator Kennedy said SB 426 clarifies three points: (1) The obligation of the local government to make loans to the SID is not dependent on there being adequate, unpaid assessments to repay the loan; (2) The obligation to make the loan is not subject to restrictions or limitations of other laws; and (3) The obligation to make the loan is not unlimited and the bill defines when the obligation would end.

SENATE TAXATION
EXHIBIT NO. 1
DATE 3-17-93
BILL NO. HB 413

PROPOSED AMENDMENT
HOUSE BILL 413
(Third Reading)

1. Page 5, line 23 through page 6, line 2.
Following: "in" on line 23
Strike: remainder of line 23 through "~~fund.~~" on page 6, line 2.
Insert: "an account in the state special revenue fund to the credit of the department."

EXECUTIVE SESSION ON HB 413

DISCUSSION:

Senator Towe suggested striking language after "in" in Line 23, Page 5 of HB 413, and insert, "an account in the State Special Revenue Fund to the credit of the Department". This will negate what was done in the House and put the money back into a Special Revenue Account.

MOTION:

Senator Towe moved adoption of the above amendment to HB 413.

DISCUSSION:

Senator Harp asked if Terry Johnson, Legislative Fiscal Analyst's office, could respond to this amendment. Mr. Johnson said by moving the revenue going into the State Special Revenue Account, there will have to be an adjustment to HB 2 so that the appropriation authority is coming out of the State Special Revenue Account versus the General Fund. The net effect will have no change on the General Fund revenue.

Senator Harp asked if the Public Service Commission wants this amendment, and was told "Yes".

VOTE:

The motion to adopt the amendment to HB 413 CARRIED UNANIMOUSLY on oral vote.

MOTION/VOTE:

Senator Stang moved HB 413 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY on oral vote. (761307SC.San) Senator Harp will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 519

DISCUSSION:

Senator Towe said he feels all of Section 2 of the bill is a statement of intent, and should be taken from the body of the bill and put into a statement of intent. Senator Halligan suggested it should stay in the statutory language.

Amendments requested by Rep. Beverly Barnhart had previously been distributed to this Committee, and were discussed. These amendments would increase the deduction allowed for purchase of recycled material from 5% to 10%.

SENATE STANDING COMMITTEE REPORT

April 5, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 413 (third reading copy -- blue), respectfully report that House Bill No. 413 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Mike Halligan, Chair

That such amendments read:

1. Page 5, line 24 through page 6, line 1.
Strike: "THE" on page 5, line 24 through "FUND" on page 6, line 1
Insert: "an account in the state special revenue fund to the credit of the department"

-END-

Amd. Coord.
Sec. of Senate

Harp
Senator Carrying Bill

761307SC.San